

ORIGINAL

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD, TALLAHASSEE, FLORIDA 32399-0850

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-M-E-M-O-R-A-N-D-U-M- COMMISSION CLERK

DATE: February 11, 2004  
TO: Blanca S. Bayó, Commission Clerk and Administrative Services Director  
FROM: Melinda H. Watts, Engineer III, Division of Competitive Markets & Enforcement  
RE: Docket No. 030995-TI - Compliance investigation of Cybertel, Communications Corp. for apparent violations of Sections 364.02(13), 364.04, and 364.336, Florida Statutes.

Cybertel, Communications Corp. sent the attached settlement offer in Docket No. 030995-TI to the attention of Fiscal Services in error. Please add this document to the docket file accordingly.

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01975 FEB 11  
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# NOWALSKY, BRONSTON & GOTHARD

A Professional Limited Liability Company

Attorneys at Law

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Monica Borne Haab  
EllenAnn G. Sands  
Bruce C. Betzer  
Philip R. Adams, Jr.

February 4, 2004

ATTN: Fiscal Services  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

RE: Cybertel, Communications Corp. Settlement Agreement

As part of its Settlement Agreement with the Florida Public Service Commission ("Commission"), Cybertel Communications Corp. ("Cybertel") previously submitted the following items to the Commission:

- 1.) 2001 Regulatory Assessment Fee Return with check number 5378 in the amount of \$74.50 to cover annual fee and associated penalty and interest;
- 2.) 2002 Regulatory Assessment Fee Return with check number 5379 in the amount of \$68.50 to cover annual fee and associated penalty and interest;
- 3.) Check number 5376 in the amount of \$9.00 to cover late payment penalty and interest associated with paying its 2000 Regulatory Assessment Fee after the due date;
- 4.) Check number 5375 in the amount of \$500.00 to cover the fine assessed in Proposed Agency Action Order No. PSC-02-143-PAA-TI in Docket No. 020716-TI; and
- 5.) Check number 5377 in the amount of \$5,000.00 to cover the penalty settlement assessed against Cybertel for operating subsequent to revocation of its interexchange certificate number 7554 in Consummating Order No. PSC-02-1596-CO-TI issued on November 18, 2003.

Cybertel has entered into an agreement to sell its customer base to ComTech21, LLC ("ComTech21"), an authorized interexchange provider in Florida. As a result of the agreement, approximately 488 Cybertel customers are being transferred to ComTech21, and Cybertel will no longer operate as a telecommunications provider in Florida.

Florida Public Service Commission  
February 4, 2004  
Settlement Agreement  
Page 2 of 2

ComTech21, LLC has filed Notification of the Transfer of Customer Base ("Notification") with the Commission, and a copy has been attached for reference. Attached to the Notification as Exhibit A is a copy of the customer notifications sent to all affected Cybertel customers within the State of Florida.

In addition, a copy of ComTech21's Petition for Waiver of the FCC Rules regarding submission of changes in subscriber's preferred carrier is attached hereto. This Petition requests limited waiver of Rules 47 C.F.R. §§64.1100 through 64.1190.

Finally, Cybertel is working with Commission Staff to resolve any outstanding issues regarding complaints, and expects to have these matters resolved promptly.

If you should have any questions regarding this Settlement Agreement, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. Borne Haab', with a long horizontal flourish extending to the right.

Monica Borne Haab

cc: Richard Schmidt, Cybertel  
Melinda Watts, Bureau of Service Quality  
Linda Dodson, Attorney FL PSC  
Division of Competitive Markets & Enforcement (Gilchrist)

Cybertel

December 15, 2003

Ms. Blanca Bayo  
Director - Division of the Commission & Admin. Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Re: ComTech21, LLC Notification of Transfer of Customer Base from Cybertel Communications.

Dear Ms. Bayo:

ComTech21, LLC ("ComTech21") submits this notification to advise the Florida Public Service Commission (the "Department") of a transaction whereby Cybertel Communications, will transfer its long distance customers to ComTech21.<sup>1</sup>

Upon review of the Florida statutes and the Department's rules, it is the understanding of ComTech21 that prior Department approval may not be required for the transfer of customers from Cybertel Communications's customer base to ComTech21 as described herein.

#### Description of Parties

##### 1. ComTech21, LLC

ComTech21 is a Delaware Limited Liability Corporation. ComTech21 maintains its principle offices at One Barnes Park South, Wallingford, Connecticut 06492.

ComTech21 is authorized to provide resold interexchange services in 48 U.S. states. ComTech21 is authorized to provide interexchange telecommunications services in the State of Florida.<sup>2</sup> ComTech21 is authorized by the Federal Communications Commission ("FCC") to

<sup>1</sup> Concurrent with this filing, ComTech21 has petitioned the Federal Communications Commission to grant a limited waiver of its subscriber carrier selection rules (47 C.F.R. §§ 64.1100 through 64.1190) and relevant Orders to the extent necessary to permit ComTech21 to transfer the customers of Cybertel Communications to ComTech21's customer base without obtaining the customers' authorization and verification.

<sup>2</sup> ComTech21's application for a Certificate of Public Convenience and Necessity was approved on September 12, 2000 in Docket No. 000-1624-C0-T1.

Florida Public Service Commission

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February 28, 2003  
Page 2

provide telecommunications services.<sup>3</sup> ComTech21 is an experienced and duly certified telecommunications carrier and has sufficient managerial and financial qualifications to acquire the customer assets of Cybertel Communications, as described below, and to ensure the uninterrupted provision of telecommunications services. Further information concerning ComTech21's managerial, technical and financial qualifications to provide telecommunications services was filed with ComTech21's Application with the Department.

## 2. Cybertel Communications Company

Cybertel Communications, a Nevada Corporation with principle offices located at 2820 La Mirada Ste H, Vista CA 92083, is authorized as a switchless reseller in Florida.<sup>4</sup>

### Description of the Transaction

Pursuant to an agreement executed between ComTech21 and Cybertel Communications, Cybertel Communications intends to transfer its customers to ComTech21. Cybertel Communications has agreed to divest certain retail assets to ComTech21 pursuant to the agreement. ComTech21 intends to migrate approximately four hundred and eighty-eight (488) Florida customers from Cybertel Communications to ComTech21. ComTech21 will provide interexchange service to these customers under the same or better rates as provided by Cybertel Communications.

Prior to the transfer of these customers to ComTech21, ComTech21 will provide them with notice of the changes in their interexchange service provider. These customers will be notified via letter that states: (a) the quality of service will remain the same and that ComTech21 will continue to provide service to the customers with the same or better service and rates currently provided to them by Cybertel Communications; (b) they have the right to switch to the interexchange carrier of their choice; (c) ComTech21 will reimburse customers for any primary interexchange carrier ("PIC") change charges if imposed by local exchange carriers ("LECs") in connection with this transaction for a period of thirty (30) days; and (d) the customers may contact ComTech21 via a toll-free number with any questions regarding the switch over. ComTech21 will also amend its tariff, if necessary, to include the applicable Cybertel Communications services and rates for those customers. After consummation of the transfer, ComTech21 will send another notification letter welcoming customers and reiterating statements (a) through (d) above. Therefore, the transaction will be completely transparent to customers and will not involve a change in the manner and quality in which Cybertel Communications customers will receive their telecommunications services.

As such, this transaction will neither disrupt the service nor cause inconvenience or confusion to Cybertel Communications customers. Similarly, the proposed transaction will have no effect on the operation of ComTech21, which will continue to provide reseller interexchange telecommunications services to customers pursuant to its existing Florida authorization.

<sup>3</sup> ComTech21 holds Section 214 global resale authority pursuant to Section 214 of the Communications Act of 1934, as amended, FCC File No. ITC-214-2000-0119-00200, Public Notice Report No. ITC-214-2000-0119-00200 (Global Resale or Limited Global Resale Authority).

<sup>4</sup> Cybertel Communications was granted authority as a switchless reseller on September 1, 2000 in T-Order No. FCC-00-00000000.

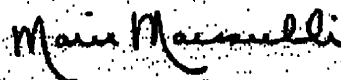
Florida Public Service Commission  
December 19, 2003  
Page 3

Public Interest Considerations

Telecommunications customers and the general public will realize significant benefits from the transfer of Cybertel Communications customers to ComTech21. Consummation of the proposed transaction will serve the public interest by allowing Cybertel Communications customers to continue to receive service, under the same or better rates. The customers will be sufficiently notified of the transaction and their rights before and after the transfer. As a result of the transfer, there is no change in the quality of service provided to customers and the customers are protected because they are being served by an experienced and qualified carrier. Hence, the public interest is served by ComTech21's managerial, technical, and financial ability to assume full provision of service to Cybertel Communication's customer base.

An original and one (1) copy of this letter are enclosed. Please date stamp the enclosed extra copy of this letter and return it in the self-addressed, stamped envelope. If you have any questions or comments regarding this filing, please do not hesitate to contact Sonja Johnson-Byers, Director Regulatory Compliance, at 203-679-7290.

Respectfully Submitted,



Marie Marcarelli  
E.V.P.  
ComTech21, LLC

Received: 1/28/04 7:55AM;  
01/26/2004 11:50 FAX 2038787180

2038787180 -> CyberTel Communications Corp.; Page 6  
SALES SUPPORT

006

**ATTACHMENT A**  
**CUSTOMER NOTIFICATION LETTERS**



**COMTECH21, LLC**

**NOTICE OF CHANGE IN LONG DISTANCE SERVICE PROVIDERS**

**CURRENT DATE**

Dear Current Cybertel Communications Customer:

ComTech21 and Cybertel Communications are pleased to announce that as of February 12<sup>th</sup>, 2004, Cybertel Communications customers will begin receiving long distance service from ComTech21. Through an agreement between ComTech21 and Cybertel Communications, ComTech21 will begin providing long distance services to the customers of Cybertel Communications.

Please note the following important information:

1. ComTech21 will provide you with the same or better high quality telecommunications services as Cybertel Communications Inc.
2. The long distance services will be provided at the same or better rates than you currently receive from Cybertel Communications Inc.
3. In the event that you would prefer to use another company as your long distance carrier, you have the right to switch to a long distance carrier of your choice.
4. ComTech21 will reimburse you for any primary long distance carrier change charges if they are imposed by your local exchange carrier in connection with the switch to ComTech21. (Please note that your primary long distance carrier will be changed even if you have a PIC Freeze associated with your telephone line).
5. ComTech21 will be responsible for resolving any outstanding complaints against Cybertel Communications. You may contact ComTech21 at its toll-free number, 1-800-370-1213, with any questions regarding your change in service to ComTech21.

ComTech21 extends a special welcome to all Cybertel Communications, Inc. customers. We realize you have a choice of telecommunications carriers, and we appreciate your business. Please call ComTech21 at its toll-free customer service number, 1-800-370-1213, if you have any concerns or questions.

Sincerely,

Customer Service Manager



**COMTECH21, LLC**

**NOTICE OF CHANGE IN LONG DISTANCE SERVICE PROVIDER**

**CURRENT DATE**

Dear Long Distance Customer formerly served by Cybertel Communications Inc:

ComTech21 is pleased that, as of January 12<sup>th</sup>, 2004, you have begun receiving long distance service from us. Through an agreement between ComTech21 and Cybertel Communications Inc., ComTech21 has begun providing long distance services to the customers of Cybertel Communications Inc.

In order to make this transition as comfortable to you as possible, we would like you to be aware of the following important information:

1. ComTech21 will provide you with the same or better high quality telecommunications services as Cybertel Communications did.
2. The long distance services will be provided at the same or better rates than you previously received from Cybertel Communications Inc.
3. In the event that you would prefer to use another company as your long distance carrier, you have the right to switch to a long distance carrier of your choice.
4. ComTech21 will reimburse you for any primary long distance carrier change charges if they were imposed by your local exchange carrier in connection with the switch to ComTech21. (Please note that your primary long distance carrier will be changed even if you have a PIC Freeze associated with your telephone line).
5. ComTech21 is responsible for resolving outstanding complaints against Cybertel Communications. You may contact ComTech21 at its toll-free number, 1-800-370-1213, with any questions regarding your change in service to ComTech21.

ComTech21 extends a special welcome to all former Cybertel Communications Inc. customers. We realize you have a choice of telecommunications carriers, and we appreciate your business. Please call ComTech21 at its toll-free customer service number, 1-800-370-1213, if you have any concerns or questions.

Sincerely,

Customer Service Manager

Received: 1/28/04 7:53AM;  
01/28/2004 11:48 FAX 2036797180

2036797180 -> Cybertel Communications Corp.; Page 2  
SALES SUPPORT 002



Cybertel  
FL-cus.

December 18, 2003

Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
445 12<sup>th</sup> Street, SW  
Washington DC, 20554

Dear Ms. Dortch,

Please accept for filing the enclosed Petition of ComTech21, LLC for Approval of a request for a limited waiver of the Commission's Rules applicable to the submission of changes in a subscriber's preferred Carrier. I have enclosed an original and five (5) copies. Please file mark the extra copy and return it to me in the enclosed self-addressed, stamped envelope.

This Petition does not involve the merger of the two companies, but is limited to the transfer of customers from one company to another.

Please contact Sonja Johnson-Byers - Regulatory Compliance on 203-679-7290 with any questions or if you require additional information about this filing. Thank you for your assistance in this matter.

Sincerely,

Marie Marcarelli  
Executive Vice President  
ComTech21, LLC

One Barnes Park South, Wallingford, Connecticut 06492

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of )  
 )  
Implementation of the Subscriber Carrier ) CC Docket No.  
Selection Changes Provisions )  
Of the Telecommunications Act of 1996 )  
 )  
ComTech21, LLC )  
Request for Waiver )

**PETITION FOR WAIVER**

**I. Introduction**

ComTech21, LLC ("ComTech21" or "Petitioner") respectfully requests a limited waiver of the Commission's Rules, 47 C.F.R. §§ 64.1100 through 64.1190 and relevant Commission Orders applicable to the submission of changes in a subscriber's preferred carrier (collectively hereafter "Rules"). Specifically, ComTech21 seeks a waiver to the extent necessary to permit it to transfer the customers of Cybertel Communications, to the Petitioner's customer base without first obtaining the customers' authorization and verification.<sup>1</sup>

<sup>1</sup> The FCC's verification rules prohibit a telecommunications carrier from submitting a preferred carrier change order unless the carrier has obtained either: (1) the subscriber's written letter of agency; (2) the subscriber's electronic verification via a toll-free telephone number used exclusively to verify subscriber carrier changes; or (3) the subscriber's oral authorization to submit the preferred carrier change order from an appropriately qualified independent third party that confirms and includes appropriate verification data - e.g., the subscriber's date of birth or social security number. 47 C.F.R. § 64.1150.

As demonstrated herein, Petitioner fully satisfies the special circumstances required for a waiver of the Commission's rules as stated in *WAT Radio v. FCC*. Grant of the instant Petition therefore will serve the public interest.<sup>2</sup> Moreover, Petitioner's request for a waiver is substantially identical to waivers of these rules previously granted by the Commission to other carriers.<sup>3</sup>

## II. Background

Petitioner currently provides resold interexchange and international telecommunications services to customers throughout the United States. ComTech21 is a Delaware limited liability corporation. ComTech21 is authorized to provide resold intrastate interexchange service in more than 48 states and international service under its Section 214 authority issued by the Commission.<sup>4</sup>

Pursuant to an agreement to be executed with Cybertel Communications, the parties intend to transfer customer accounts to the Petitioner. Petitioner may migrate up to approximately 488 customers, from Cybertel Communications to Petitioner. Unless the FCC grants this Petition, these customers' interexchange services may be interrupted or discounted at some point in the future, and the customer may be subject to higher rates.

<sup>2</sup> *WAT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990).

<sup>3</sup> See *infra* note 6.

<sup>4</sup> See ITC-214-20000419 (granted effective June 7, 2000).

In accordance with the Commission's prior Orders in this docket, Petitioner will notify all of the affected 488 customers prior to their transfer to Petitioner, via a letter that states: (a) the customers will receive the same or better services and rates upon transfer to ComTech21; (b) they have the right to switch to the interexchange carrier of their choice, (c) Petitioner will reimburse a customer for any preferred interexchange carrier change charges incurred from the local exchange carrier ("LEC") if a customer decides to change his or her preferred interstate carrier within 30 days from the transfer date; and (d) customers may contact Petitioner via a toll-free number with any questions regarding the transfer.<sup>5</sup> ComTech21 will also amend its FCC tariffs, if required, to include the applicable Cybertel Communications services and rates for these customers. After consummation of the sale, Petitioner will send another notification letter welcoming customers to Petitioner and reiterating statements (a) through (d) above. Sample notification letters are attached as Exhibit A to this Request for Waiver of the Commission's Rules.

### III. Special Circumstances Exist to Grant the Instant Waiver Request

The FCC has authority to waive a rule if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest. *WALT Radio* at 1159; *Northeast Cellular Telephone Co.* at 1166. The Petitioner asserts that special circumstances exist for waiver of 47 C.F.R. §§ 64.1100 through 64.1190. First, a waiver of these rules will enable

<sup>5</sup> See *infra* note 6.

customers to continue to receive the same services and the same or better rates from Petitioner without a possible disruption in service. In addition, requiring Petitioner to obtain verifications from each of these approximately 488 customers before it can begin to provide them service may delay the transfer to Petitioner, interrupt customers' services, and preclude their ability to make interexchange and international calls.

Waiver of these rules will serve the public interest because all Cybertel Communications customers switched to Petitioner will receive prior notification of the change in carriers, be informed of their ability to select the interexchange carrier of their choice, be reimbursed for any preferred carrier change charges imposed by LECs, and be given a toll-free number to contact Petitioner with any questions regarding the transition. Moreover, after customers are switched to Petitioner, they will receive a second letter again informing them of this information. These letters will ensure that customers are informed of the process and that their rights are adequately protected. By granting the transfer of these customers via notification as described in this Petition, the Commission will ensure that the underlying policy goals of the carrier change rules are served in a more efficient fashion that will permit Petitioner to seamlessly transfer Cybertel Communications's customers to Petitioner without any disruption in service.



Furthermore, the circumstances involved in the instant Petition are similar to those in which the Commission has previously found sufficient to justify a waiver of these rules for other carriers.<sup>6</sup> Where: (1) an interexchange carrier has entered into an agreement to purchase assets, including the customer base, from another interexchange carrier, and (2) the purchasing carrier has pledged to notify the customers of the change in providers, and (3) waiver of the Commission's authorization and verification rules would permit a smooth transition between providers, without a loss of service or rates, the Commission has consistently found that the special circumstances exist warranting a waiver, and that grant of the waiver would serve the public interest.

#### IV. Conclusion

Petitioner respectfully requests that the Commission grant a limited waiver of the authorization and verification requirements of the Commission's Rules, 47 C.F.R. §§ 64.1100 through 64.1190, and relevant Orders to the extent necessary to permit the Petitioner to transfer selected customers of Cybertel Communications to the Petitioner's customer base without first obtaining the customers' authorization and verification. For the reasons stated herein, grant of this request for a waiver of the Commission's Rules is in the public interest.<sup>7</sup>

<sup>6</sup> See Orders issued in *Implementation of Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996*, International Exchange Communications, Inc. Request for Waiver, Order, CC Docket No. 94-129, granting waiver of the Commission's authorization and verification requirement to various carriers, including US West Communications, Inc. (DA 00-1690, rel. July 28, 2000) and Telephone USA of Wisconsin, LLC (DA 00-1679, rel. July 28, 2000).

<sup>7</sup> See, e.g., *International Exchange Communications, Inc. Request for Waiver*, Order, CC Docket No. 94-129, DA 99-1549 (rel. Sept. 18, 1999); *MCI WorldCom Inc. Request for waiver*, Order, CC Docket No. 94-129, DA 99-1819 (rel. Aug. 6, 1999).

Respectfully Submitted,

By: Marie Marcarelli  
Marie Marcarelli  
Executive Vice President  
ComTech21  
One Barnes Park South  
Wallingford, CT. 06492  
Telephone: 203-679-7201

Date: 12/18/03